IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

CRP.No. 2417 of 1999(E)

AGAINST THE ORDER DATED 17/11/1998 IN CEILING CASE NO. L6/SM/5/1988 of TALUK LAND BOARD, ALWAYE

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REVN. PETITIONER:

CHACKO CHUMMAR, PYNADATH, AKAPARAMBA,
CHENGAMANAD VILLAGE, ALUVA TALUK.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:

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1. THE TALUK LAND BOARD, ALUVA,
REPRESENTED BY ITS CHAIRMAN, COLLECTORATE,
KAKKANAD, ERNAKULAM.

2. THE TAHSILDAR, ALUVA.

3. THE STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY TO THE GOVERNMENT,
THIRUVANANTHAPURAM.

BY ADV. SHRI.V.T.K.MOHANAN, GOVERNMENT PLEADER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CMP NO. 2417/1999

ORDER ON CMP NOS. 4929/1999 & 197/2000 IN CRP NO. 2417/1999

DISMISSED.

19/10/2007 SD/- (P.R.RAMAN, JUDGE)

// TRUE COPY //

PA TO JUDGE.

jg

P.R.RAMAN, J.

C.R.P. No. 2417 of 1999

Dated, this the 19th day of October, 2007

O R D E R

The challenge in the Civil Revision Petition is against the order passed by the Taluk Land Board, Aluva in ceiling case No. L6/SM/5/88/ALY. Earlier, the Taluk Land Board passed an order directing the petitioner to surrender the excess land, which was the subject matter challenged in C.R.P. No. 1655/1992 and this Court allowed the C.R.P. by way of remand, giving one more opportunity to the revision petitioner to supply the details of the persons, who according to him are in possession of various items of property mentioned in the draft statement. The contention of the petitioner was that an excess of six acres of land, which was actually in his possession and the remaining extent of land directed to be surrendered are lands outstanding in possession of tenants and as per the provisions of Kerala Land Reforms Act they also obtained purchase certificates from the concerned Land Tribunal. In the absence of any evidence adduced, the petitioner was afforded one more opportunity and the matter was remanded by this Court earlier. Pursuant to the remand order passed, the Land Board re-

considered the matter with the available materials and recorded a finding that the petitioner is liable to surrender an extent of 21.83.961 acres of land, which was found to be in excess of the ceiling area applicable.

2. Pursuant to the remand order passed by this Court, the petitioner supplied the list of persons, who were said to be tenants in possession of the land. The Taluk Land Board issued notice to them. Some of them appeared and produced some documents and some of them did not. It was after considering these documents, which were produced, orders were passed. In the case, where no material was supplied, the contention was rejected.

3. One Shri.Paily Thomas is stated to be in possession of 1.38 acres in Survey No. 1022/6 of Kothakulangara North Village. He had produced certified copy of the purchase certificate No. 6078/75, but still the Land Board did not accept this, stating that no documentary evidence was produced. A purchase certificate issued by the competent land Tribunal is a valid title in respect of the property under Section 72 of the Kerala Land Reforms Act, and unless it is found that the purchase certificate was obtained by way of fraud or collusion, it cannot be rejected. In the absence of any

such finding, this land ought to have been excluded. Hence an extent of 1.38 acres is liable to be excluded from the account of the declarant. Likewise, the property for an extent of 85 cents in Sy.No. 176/7 of the same village is also covered by purchase certificate No. 648/75 and 656/75 and for the same reason, they are also liable to be excluded.

4. The land in possession of Shri.Puthusserry Lonappan Antony, admittedly outstanding in possession since 1950 as per the document No. 1945/59 in Sy. No. 176/7-2 of Kothakulangara Sourth Village. The Land Board accepted that he was in possession of the land. Actual extent in this survey number is 69 cents, by mistake, the petitioner has claimed exemption only for 53 cents. Once it is found that the entire 69 cents is thus covered by the document, the petitioner shall not be penalised for the inadvertent mistake committed by him especially when the fact remains that he was only a minor at the time when these properties were obtained by him as per the Will obtained by his grand-father. In the circumstances, the entire extent of 69 cents be excluded, instead of limiting to 53 cents.

5. Though the various other items dealt with in the Land

Tribunal order are also stated to be the lands outstanding in possession of tenants, admittedly, acceptable evidences were not produced either by those who were in possession, or by the petitioner despite opportunity given. The learned counsel appearing for the petitioner would seek for a further opportunity, but unless it is shown that he has been denied any such opportunity, he is not entitled for a further opportunity. On a reading of the previous order of this Court, nobody can doubt that the purpose of the remand order was to facilitate the petitioner herein to produce sufficient evidence before the Land Board. When he has been granted such an opportunity, he has to avail that opportunity and produce documents in support of his case. Hence, the petitioner cannot be heard to contend that he was denied an opportunity of being heard in the matter.

6. However, since the definite case of the petitioner is that there were the land outstanding in possession of the third parties and to whom notice was served, actually, it was their responsibility to produce documents in support of their title. Therefore, in the absence of any fraud or collusion or a case that the petitioner has fraudulently transferred any land in favour of third parties, the

petitioner's contention though rejected for want of evidence, it cannot be said that other lands in possession of the petitioner shall be first taken. According to the petitioner, he has in possession of only an extent of six acres of land. Therefore, for the time being, the Land Board shall proceed to recover the same lands in respect of which claims of tenancies were rejected for want of evidence in spite of notice to those persons and thereafter only to proceed to take the land in the hands of the petitioner be taken.

The C.R.P. is disposed of as above.

(P.R.RAMAN, JUDGE)

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